

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-208684.2

DATE: November 15, 1983

MATTER OF: Joule Maintenance Corporation

DIGEST:

Where a protest has been sustained based in part on a finding that the solicitation was defective, the protester's subsequent request that GAO amend its recommended relief (that the agency resolicit after correcting the defective solicitation) and instead recommend award to the protester, is denied where the reconsideration request appears to be based on new information which would merely reinforce GAO's conclusion that the solicitation was defective.

Joule Maintenance Corporation requests reconsideration of our decision Joule Maintenance Corporation, B-208684, September 16, 1983, 83-2 CPD ____, sustaining Joule's protest that the Department of the Army's decision to continue performing certain services in-house was based on an inaccurate cost comparison. We recommended that the Army resolicit and conduct a new cost comparison after correcting the noted deficiencies. Joule asks that we alter our recommendation and direct the Army to make award to Joule. We affirm our decision.

We sustained Joule's protest, in part, based on our conclusion that the statement of work (SOW) in the solicitation was deficient. Although the SOW directed offerors to include in their proposals only work currently performed by the in-house work force, it failed to indicate that the in-house work force was not performing certain work which seemed to be encompassed by the solicitation. We found that this deficiency could have misled Joule and other offerors into overstating their proposed costs. This deficiency, together with a failure by the Army to include its full first year labor costs in the government estimate, cast significant doubt on whether in-house performance would be less costly than contracting out, as the cost comparison had indicated. Since the deficient SOW was unfair to all offerors, not just Joule, we recommended that the Army initiate a new cost comparison with a new solicitation.

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Joule's reconsideration request is based on recent information allegedly indicating that the Army withheld from our Office data purportedly concerning the "nature, scope, and extent" of commercial contracts encompassed by the SOW. Although Joule has yet to supply us with this data which it intended to obtain through the Freedom of Information Act, it apparently believes it will clearly show that certain existing commercial contracts covered tasks encompassed by the SOW. It asks that we delay our consideration of its reconsideration request until it can submit this information.

We see no reason to delay our consideration of this request or amend our decision on this matter. Even if Joule is correct in its assertions, its submission of this new evidence would provide no basis for changing our recommendation. This is because, as outlined above, in concluding that the SOW was deficient, we necessarily found evidence in the record that enough work covered by the SOW was being performed by commercial contractors to have invalidated the cost comparison; it was this evidence which led us to sustain this portion of the protest in the first place. The information Joule wishes to submit would constitute no more than additional evidence in support of our conclusion.

As already explained, we recommended a new cost comparison, instead of an award to Joule, because all offerors could have been misled by the deficient SOW. To recommend an award to Joule under these circumstances would have been to ignore the possibility that some other offeror's proposed cost could have been lower than Joule's but for the SOW deficiencies. This would have been unfair. It generally has been our approach, where we have found a solicitation defective and some form of relief practicable, to recommend that the contracting agency resolicit its requirement using a proper solicitation, so all offerors will be assured a fair chance to compete. See, e.g., Globe Air, Inc., 56 Comp. Gen. 671 (1977), 77-1 CPD 395; Linolex Systems, Inc., et al., 53 Comp. Gen. 895 (1974), 74-1 CPD 296; PhilCon Corp., B-206641 et seq., April 12, 1983, 83-1 CPD 380. Our recommendation in this instance was consistent with that approach.

The Army's alleged withholding of evidence from our Office, even if shown to be true, would not warrant altering our recommendation.

B-208684.2

Our prior decision is affirmed.

Milton J. Aoulan

Acting Comptroller General
of the United States